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24 October 1978

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MEMORANDUM FOR: [REDACTED] Deputy Director Office of Finance

25X1A FROM : [REDACTED]
 Acting Chief, Commercial Systems and Audit Division/OF
 SUBJECT : Audits Under Public Law 87-653 (Truth in Negotiations)

1. We have performed four audits under subject public law. Two audits under Agency contracts with [REDACTED] 25X1A [REDACTED] disclosed no significant defective pricing. As a result of two additional audits, detailed in the ensuing paragraphs, we recommended price changes and also reported on a denial of access to records.

2. (a) Audit under Agency Contract 1

25X1A

[REDACTED] disclosed that the contract price was increased by a significant amount because the contractor furnished inaccurate, incomplete, or non-current cost or pricing data at time of award. Audit recommended that \$91,535 be refunded to the Agency because of the following:

| | |
|---|-----------------|
| Material Overpricing | \$35,144 |
| Mathematical Errors | 1,830 |
| Non-deletion of Packing Costs (of Items Subsequently Deleted) | 1,825 |
| Pricing of Catalog Items | 52,736 |
| Total | <u>\$91,535</u> |

(b) At the same time this audit was performed, the contractor denied audit access to records under Agency Contract No. [REDACTED] The company was of the opinion that the contract was awarded based upon "adequate price competition" particularly since a "best and final" offer was solicited and submitted. Audit is of the opinion that the contractor signed the standard certificate of current cost and pricing at time of negotiation and did not seek an exemption. We consider that even had the contractor requested exemption, sufficient grounds existed for denial. ASPR 3-807.1(b) states "price competition (which otherwise meets all other conditions) may be presumed adequate unless -- the low bidder has such a determinative advantage over other competition that he is -- placed in a preferential position". In our opinion, such preferential position did exist. The contractor had performed Phases I, II, and III of the program on predecessor contracts. The Contracting Officer has been seeking a legal opinion as to whether the Agency has the right to audit.

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(c) We, together with representatives from the Office of Logistics, have held several meetings with the contractor's representatives in attempting to settle the contract. Audit recognized that it had taken a "hard nosed" position in computing the rebate due in pricing of the catalog items (in effect not recognizing efficiencies in contract performance which may have resulted in greater profits in other areas) and suggested a net rebate of \$60,000. This offer was made by the Contracting Officer but not accepted by the company representatives.

(d) A subsequent visit by the contractor's representative resulted in an offer by the company of a \$160,000 rebate with the condition that the Agency not pursue audit under the contract on which access to records was denied and also waive audit under a succeeding contract covering Phase V of the program.

(e) CSAD recommended that a rebate of approximately \$60,000 be negotiated and efforts to audit the succeeding two contracts with [REDACTED] Corporation be continued.

25X1A

3. (a) Audit under Agency Contract [REDACTED] task order 11 with [REDACTED] recommended that \$35,738 be refunded because of inaccurate, incomplete or non-current cost or pricing data in the following categories:

| | |
|--------------------|-----------------|
| Spares Changes | \$28,189 |
| Line Printer | 5,937 |
| Card Punch Pricing | 1,612 |
| | <u>\$35,738</u> |

(b) Although we have as yet had no formal response from the Office of Logistics on the status of negotiation with [REDACTED] representatives, it is our understanding that a price adjustment is contemplated.

25X1A

4. All of the aforementioned audits were performed in the spring and summer of 1975. Although reports were issued at that time, negotiations were not started with the [REDACTED] until June 1978. We do not know if [REDACTED] International has as yet been formally notified on the status of its contract. Public Law 87-653 imposes a time limit for audit of three years after final payment. We hope that if and when legal counsel rules in the

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affirmative as to the Agency's right to audit [REDACTED] 5X1A
it will not also have been determined that the Agency's right has expired
because of the statute of limitations.

5. As you know, because of a critical shortage of qualified personnel, we have had to temporarily suspend our program of selectively reviewing negotiated procurements which fall within the purview of Public Law 87-653. Recognizing the import of audits of this nature not only in the adjustments of prices on contracts awarded, but also enhancement in the quality of future proposals, we have established a 1979 objective under MBO to perform nine such audits during the current fiscal year. We have recently assigned two auditors to work exclusively in this area.

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